

Message Text

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C O N F I D E N T I A L SECTION 1 OF 2 BERLIN 5887

E.O. 11652: N/A

TAGS: PFOR, CGEN, GE

SUBJECT: CONSULAR CONVENTION NEGOTIATIONS: SECOND ROUND

SUMMARY: THIS MESSAGE DESCRIBES THE SETTING IN WHICH THE SECOND ROUND OF CONSULAR CONVENTION NEGOTIATIONS WILL TAKE PLACE, RAISES SOME QUESTIONS CONCERNING PRIORITIES AND ISSUES, AND REQUESTS INFORMATION ON CERTAIN ASPECTS OF THESE TALKS. END SUMMARY.

AA. SETTING

1. AS WE PREPARE FOR THE SECOND ROUND OF CONSULAR NEGOTIATIONS TO BE HELD IN EAST BERLIN, IT IS IMPORTANT NOT TO LOSE SIGHT OF THE SETTING IN WHICH THESE TALKS WILL TAKE PLACE. THE NEGOTIATION OF A CONSULAR CONVENTION IS THE MAJOR ACTIVE PIECE OF BILATERAL BUSINESS BETWEEN OUR TWO GOVERNMENTS AT THE PRESENT TIME. ALTHOUGH BOTH SIDES WISH TO SEE THE SUCCESSFUL CONCLUSION OF THESE NEGOTIATIONS, IT REMAINS TRUE, IN THE EMBASSY'S JUDGMENT, THAT THE GDR IS IN THE ROLE OF DEMANDEUR. THE USG CAN CONTINUE TO CARRY OUT CONSULAR FUNCTIONS WITHOUT SUCH A CONVENTION, AS CAN THE GDR THROUGH ITS EMBASSY IN WASHINGTON.

2. THE GDR, WE BELIEVE, CONSIDERS A CONSULAR AGREEMENT
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WITH THE US MORE IMPORTANT THAN WITH ANY OTHER NON-

COMMUNIST NATION. ITS IMPORTANCE IS PRIMARILY POLITICAL AS EVIDENCED BY GDR INSISTENCE ON A DEFINITION OF NATIONALITY. THE GDR ALSO SEEKS TANGIBLE EVIDENCE OF SUBSTANCE IN ITS RELATIONS WITH THE US WITHIN THE FIRST TWELVE MONTHS OF THESE TIES (I.E., BEFORE SEPTEMBER 4 OF THIS YEAR). FOR THE US THE NEGOTIATIONS ARE IMPORTANT, AS THEY COULD PROVIDE EXPERIENCE ON THE ATTITUDE OF THE GDR TOWARD NEGOTIATIONS ON OTHER ISSUES: FURTHER, THE US POSITION SHOULD PROVIDE LEADERSHIP TO ALLIES, PARTICULARLY ON THE NATIONALITY ISSUE.

3. AS THE DEPARTMENT KNOWS, THE ISSUE OF GREAT IMPORTANCE TO THE GDR IS ITS DEFINITION OF NATIONALITY IN THE AGREEMENT. THIS POINT INVOLVES NOT ONLY US INTERESTS BUT ALSO THOSE OF THE FRG. THE NATIONALITY ISSUE HAS RECEIVED OFFICIAL AND PRESS ATTENTION OF A DRAMATIC KIND IN THE CASE OF THE AUSTRAIN NEGOTIATIONS; THE EXPECTED CONCLUSION SOON OF A CONSULAR AGREEMENT WITH THE UK WILL ALSO UNDOUBTEDLY RECEIVE PUBLIC ATTENTION. THE POLITICAL ISSUE OF NATIONALITY HAS REACHED BOTH THE OFFICE AND THE PERSON OF THE FRG FOREIGN MINISTER, AND IS ONE WE MUST CONTINUOUSLY BEAR IN MIND IN THE CONTEXT OF OUR RELATIONS WITH THE FEDERAL REPUBLIC.

4. THE GDR DELEGATION, LED BY AMBASSADOR KLOBES, IS EXPERIENCED AND HAS THE REPUTATION OF BEING UNPLEASANT, EFFECTIVE AND HARD-DRIVING. IT SEEMS LIKELY THAT BOTH SIDES WILL BE PREPARED, AFTER CONSIDERATION OF NEW DRAFTS SUBMITTED BY EACH, TO BEGIN THE SECOND ROUND OF TALKS IN THE MIDDLE OF JULY.

B. ISSUES

5. THE CHIEF ISSUE, PERHAPS ON BOTH SIDES, CONCERNS THE DEFINITION OF NATIONALITY. THE EMBASSY FULLY SUPPORTS THE DEPARTMENTS' FIRM STAND AGAINST THE INCLUSION OF SUCH A DEFINITION IN A CONSULAR AGREEMENT. WE BELIEVE THAT THIS SHOULD BE A POINT OF NO COMPROMISE IN THESE NEGOTIATIONS.

6 IN ADDITION, THE AMBASSADOR HAS RAISED THE NEED FOR CONFIDENTIAL

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A STUDY AND FINDING ON WHETHER THE "DUE PROCESS" CLAUSE OF THE FIFTH AMENDMENT AND THE "DUE PROCESS" AND THE "EQUAL" PROTECTION OF THE LAWS" LANGUAGE OF THE FOURTEENTH AMENDMENT PROVIDE TO ALIENS WITHIN THE JURISDICTION OF THE US THE SAME INDIVIDUAL RIGHTS OF CERTAIN PROTECTION AS ACCORDED TO US CITIZENS.

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7. IF A DEFINITION OF NATIONALITY IS EXCLUDED FROM THE CONVENTION, THE QUESTIONS OF PRIOR NOTIFICATION AND ACCESS TO GDR NATIONALS IN THE US SEEKING CONSULAR SERVICES REMAIN. IF FOR EXAMPLE, A CITIZEN OF THE GDR SOUGHT CONSULAR REPRESENTATION FROM THE FRG IN THE US, IT MIGHT NOT BE INAPPROPRIATE TO PERMIT A GDR REPRESENTATIVE ACCESS, SHOULD A REQUEST BE MADE, TO SUCH A PERSON TO DETERMINE AT FIRSTHAND THE TRUE NATURE OF THE GDR CITIZEN'S REQUEST. SUCH A PROCEDURE COULD ASSURE RECIPROCITY OF PROTECTION PARTICULARLY IF INCLUDED IN THE AGREEMENT, TO US CITIZENS IN THE GDR, IN CASE THE GDR REPORTED THAT A US CITIZEN DID NOT DESIRE US REPRESENTATION.

8. THERE ARE OTHER CONTENTIOUS ISSUES IN THESE NEGOTIATIONS. THE EMBASSY WOULD LIKE TO RECEIVE A LISTING OF THE PRIORITIES OF US INTERESTS IN THE NEGOTIATIONS, OUR POSITIONS ON KEY ISSUES INCLUDING FALLBACK POSITIONS WHERE THESE EXIST, AND THE DEPARTMENT'S VIEWS AS TO THE OVERALL STRATEGY WITHIN THE PRIORITIES OF OUR INTERESTS THAT SHOULD GOVERN THE SECOND ROUND OF NEGOTIATIONS.

C. PROCEDURES

9. THERE ARE PRACTICAL QUESTIONS IN CONNECTION WITH
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THESE NEGOTIATIONS TO WHICH WE DO NOT HAVE ANSWERS.
FOR EXAMPLE: WHAT WAS THE COMPOSITION OF THE GDR
DELEGATION AND THE US DELEGATION IN THE FIRST ROUND?
ON THE GDR SIDE WHICH INDIVIDUALS DEALT WITH WHAT AREAS
OF RESPONSIBILITY; WHICH GERMANS SEEMED MORE FLEXIBLE
THAN OTHERS; WHAT CAN THE DEPARTMENT TELL US ABOUT THE
NEGOTIATING STYLE OF THE EAST GERMANS DELEGATION AND
OF AMBASSADOR KLOBES IN PARTICULAR? WHAT SOCIAL
ACTIVITIES TOOK PLACE, AND WHICH MIGHT BE APPROPRIATE
FOR THE US SIDE IN THE SECOND ROUND?

10. WE WOULD ALSO LIKE TO RECEIVE AS PROMPTLY AS
POSSIBLE ANY ISSUES PAPERS AND RECORDS OF NEGOTIATION
FROM THE FIRST ROUND.

D. FUTURE PLANS

11. WE REALIZE THAT THE DEPARTMENT IS AT PRESENT
ANALYZING THE NEW EAST GERMAN DRAFT. WE WOULD
APPRECIATE RECEIVING, WHEN THIS STUDY HAS BEEN
COMPLETED, THE DEPARTMENT'S ASSESSMENT, ARTICLE BY
ARTICLE, OF THE GDR DRAFT AND ITS RECOMMENDATIONS AND
INSTRUCTIONS FOR PROCEEDING WITH BOTH DRAFTS IN THE
SECOND ROUND. WE ARE AWARE THAT MANY OF THE ISSUES ARE
HIGHLY TECHNICAL. IT REMAINS TRUE NEVERTHELESS THAT
CONCESSIONS, NO MATTER IN WHAT AREA, WILL BE SEEN BY
BOTH SIDES IN A POLITICAL AS WELL AS TECHNICAL CONTEXT.

12. WE SUGGEST THAT THE COMPOSITION OF THE US
DELEGATION FOR THE SECOND ROUND OF TALKS BE AS FOLLOWS:
AND REQUEST THE DEPARTMENT'S VIEWS ON THIS POINT;
DCM, CHAIRMAN; MR SHAMWELL OF L AND OTHER EXPERTS
(HOW MANY;); MR WOLF OR MR. HANSON OF THE EMBASSY
STAFF TO PROVIDE EXPERTISE ON OUR CONSULAR EXPERIENCE
HERE SO FAR, AND TO SERVE AS RECORDER; AND INTERPRETER;
AND A TDY SECRETARY. WE WISH TO EMPHASIZE THAT THERE
WILL BE NO SECRETARIAL ASSISTANCE POSSIBLE WITHIN PRESENT
EMBASSY STAFFING.

13. THE EMBASSY REQUESTS THAT MEMBERS OF THE US DELEGATION
ARRIVE IN BERLIN SUFFICIENTLY EARLY TO PERMIT AT LEAST
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TWO FULL WORKING DAYS OF CONSULTATION IN THE EMBASSY
IN ADVANCE OF THE RESUMPTION OF DISCUSSIONS WITH THE
EAST GERMANS. THIS IS A MATTER OF GREAT IMPORTANCE.COOPER

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